

**THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

MICHAEL AND SHELLIE GILMOR,  
et al.,

Plaintiffs,

vs.

PREFERRED CREDIT CORPORATION,  
et al.,

Defendants.

Case No. 4:10-cv-00189-ODS

**MOTION OF DEFENDANTS COUNTRYWIDE HOME LOANS, INC. AND  
BAC HOME LOANS SERVICING, L.P. TO DECERTIFY CLASS**

Defendants Countrywide Home Loans, Inc. (“Countrywide”) and BAC Home Loans Servicing, L.P. (“BAC”), pursuant to Fed. R. Civ. P. 23, move for an Order of the Court decertifying the plaintiff class as to each of them. In further support hereof, and as set forth in the accompanying suggestions in support which are hereby incorporated, Countrywide and BAC state as follows:

1. The Circuit Court of Clay County, Missouri certified a plaintiff class under state law on January 2, 2003. At the time, neither Countrywide nor BAC was a defendant in this suit.
2. Plaintiffs added Countrywide to this action in March 2004 and BAC in 2011.
3. Plaintiffs have not filed any class certification motion against either Countrywide or BAC.
4. This Court has not vetted the named Plaintiffs as adequate class representatives nor has it determined that the requirements of Rule 23(a) and (b) have been met.

5. Decertification is proper as to Countrywide and BAC. Numerosity, typicality and adequacy of representation are lacking under Rules 23(a)(1), (3) and (4). Only fourteen class loans are at issue with respect to Countrywide and BAC.<sup>1</sup>

6. Numerous individual issues exist such that resolution of the claims in a class trial is inconsistent with Rule 23. Multiple defendants remain but each is in a different position from Countrywide and BAC.

7. The evidence that may be admitted at trial will be varied and confusing making a trial unmanageable. Plaintiffs must introduce individual evidence as to each loan. Moreover, Countrywide and BAC may assert defenses against the claims of certain class members which defenses may be different from other parties' defenses. At a minimum, the defenses cannot be tried with common evidence of the class as a whole. A class action is not superior to individual claims under these circumstances.

8. Plaintiffs' claims for damages present another individual issue such that a trial *en masse* would not be proper. Different borrowers obtained loans for different reasons and under different circumstances, were charged different fees, made different payments for different periods of time. Moreover, the Constitution requires that any claim for punitive damages be based upon a particular defendant's conduct as it relates to a particular plaintiff or class member.

WHEREFORE, for these reasons, as well as those set forth in the accompanying suggestions in support which are hereby incorporated, defendants Countrywide Home Loans, Inc. and BAC Home Loans Servicing, L.P. request that the Court enter its Order decertifying the

---

<sup>1</sup> Countrywide serviced four additional class loans for a brief period of time for certain FirstPlus Home Loan Owner Trusts, the trustees of which are U.S. Bank National Association and Wilmington Trust Company. The Court's June 28, 2011 Order has stayed all further proceedings as to claims concerning these parties. (Dkt. No. 328.) Countrywide is not seeking to disturb the stay or proposed settlements in this motion and this motion, accordingly, is not directed at those loans or claims.

plaintiff class as to them, for their costs incurred herein, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Mark A. Olthoff

MARK A. OLTHOFF MO #38572

ANTHONY BONUCHI MO #57838

MICHAEL S. FOSTER MO #61205

POLSINELLI SHUGHART PC

1700 Twelve Wyandotte Plaza

120 West 12th Street

Kansas City, Missouri 64105-1929

(816) 421-3355

(816) 374-0509 (FAX)

[molthoff@polsinelli.com](mailto:molthoff@polsinelli.com)

[abonuchi@polsinelli.com](mailto:abonuchi@polsinelli.com)

ATTORNEYS FOR COUNTRYWIDE HOME  
LOANS, INC. AND BAC HOME LOANS  
SERVICING, L.P.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing document was filed electronically with the above-captioned court, with notice of case activity to be generated and sent electronically by the Clerk of said court (with a copy to be mailed to any individuals who do not receive electronic notice from the Clerk) this 1st day of May, 2012, to all counsel of record.

/s/ Mark A. Olthoff

Attorney for Countrywide Home Loans, Inc. and  
BAC Home Loans Servicing, L.P.